No. 80-893

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

GLENN P. KIRKLAND, *et al.*,
Petitioners,

v.

ARKANSAS-BEST FREIGHT SYSTEM, INC.;
INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND HELPERS OF AMERICA; SOUTHERN
CONFERENCE OF TEAMSTERS; CENTRAL STATES
CONFERENCE OF TEAMSTERS,
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondents would state the issue as follows: Are employees who challenge an award made by an arbitral committee entitled to recover damages for procedural irregularities that occurred during the hearings, notwithstanding a finding that the award itself was a permissible one under the collective bargaining agreement?

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RESPONDENTS' BRIEF IN OPPOSITION

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported at 629 F. 2d 538 (8th Cir. 1980), while the order denying rehearing is not yet officially reported. (Pet. App. A54).[1] The opinion of the District Court is reported at 475 F. Supp. 180 (E.D. Ark. 1979).

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[1] References to "Pet App." are to the Appendix to the Petition for a Writ of Certiorari in this matter.

JURISDICTION

The judgment of the United States Court of Appeals for the Eighth Circuit was entered on August 25, 1980. Petitioners' petition for rehearing was denied on October 6, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTE INVOLVED

The relevant portion of the Labor-Management Relations Act of 1947 is § 301, 29 U.S.C. § 185, which is adequately set forth in the petition at page 3.

STATEMENT OF THE CASE

I. Nature of the Case

Petitioners, truck drivers employed by Defendant, Arkansas-Best Freight System, Inc. ("ABF"), and domiciled in Arkansas, are members of Teamsters Local Unions in Little Rock (Local 878) or Fort Smith (Local 373), Arkansas.

Petitioners sued ABF and the International Brotherhood of Teamsters ("IBT") and two of its affiliates, the Central Conference of Teamsters ("Central") and the Southern Conference of Teamsters ("Southern"),[2] claiming that their seniority and other rights provided in the National Master Freight Agreement ("NMFA") had been violated by ABF's movement of certain freight operations from Arkansas to Northern terminals, principally in Ohio. The claim was that ABF had violated the NMFA, and that IBT, Central and Southern had violated a duty of fair representation.

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[2] This brief in opposition is filed on behalf of the three respondent labor unions, who shall be referred to collectively hereinafter as union respondents.

Trial was to the court whose findings and conclusions stated that the change of operations was "not impermissible"[3] and that the change of operations committee "has the duty to resolve questions of seniority and domicile fairly and in good faith";[4] but that established rules of procedure were not followed. Judgment was for petitioners against ABF, IBT, Central and Southern for specified amounts totalling $258,868.78.

On appeal, the United States Court of Appeals for the Eighth Circuit agreed that the ruling of the change of operations committee was permissible and affirmed the district court's finding of joint liability[5] for the procedural irregularities (Pet. App. A44). However, the court vacated the awards of monetary damages and simply awarded petitioners their costs because petitioners "failed to prove damages caused by the errors in connection with the proceedings before the change of operations committee" (*Id.* A51) and because "[t]here is no evidence that the affected drivers were damaged any more by the action of the committee that . . . approved the . . . [change of operations] proposal than they would have been damaged had the proposal been given fair consideration by a properly constituted committee (*Id.* A52).

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[3] Pet. App. A15. This curious phrase, coined by the district court, is no less than a judicial determination that the committee's decision did not breach the contract.

[4] Pet. App. A15.

[5] The issue of liability of the unions for the alleged procedural irregularities is addressed in our cross-petition filed on this date.

II. The Pertinent Facts

A. The "Change Of Operations" and the Collective Bargaining Agreement

The NMFA[6] is a nationwide collective bargaining agreement which specifies the wages, hours and working conditions — including seniority rights — which employees of signatory motor carriers must receive. Unions and employees seek to freeze as many conditions as possible for the term of the contract.

Management, on the other hand, insists that the motor freight industry cannot be static; the changing nature of the economy, the varying demands of shippers, the mobility of industry which results in changing patterns of concentrations of customers, and improvements in highways and in equipment all contribute to the necessarily volatile nature of the motor freight industry.

These competing employer vs. employee interests are accommodated in the NMFA by a series of provisions relating, on the one hand, to employees acquiring and maintaining seniority status and job seniority,[7] and, on the other, the employer's absolute right "to designate home domiciles and the operational requirements of the business."[8]

Preservation of both the employees' seniority rights and the employer's right to designate home domiciles and determine

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[6] Where we refer to "NMFA" unless otherwise indicated throughout the brief, we include the applicable area supplement. The agreement at issue herein covered the period July 1, 1973 to May 31, 1976.

[7] See NMFA, Art. 5, §§ 1-7 (Pl. Ex. 1, pp. 18-27); and Southern Supplement at Art. 42, §§ 1-6 (P. Ex. 1, p. 95 ff); see district court's Finding No. 7 (Pet. App. A3-A6).

[8] NMFA, Art. 8, § 6 (Pet. App. A4-A6).

operational requirements is the function of a committee established pursuant to Article 8, § 6, which provides:[9]

> Present terminals, breaking points or domiciles shall not be transferred or changed without the approval of an appropriate change of operations committee. Such committee shall be appointed in each of the Conference Areas, equally composed of employer and union representatives. The change of operations committee shall have the authority to determine the seniority of the employees affected and such determination shall be final and binding.
>
> * * *
>
> The Committee shall observe the employer's right to designate home domiciles and the operational requirements of the business.

After reviewing these provisions in detail, the district court held: "[T]he interpretations given to these clauses of the agreements by the change of operations committee were not impermissible ones given the board authority of the committee". (Pet. App. A15). And the particular change at issue here was, as the district court found, "to the economic advantage of the company".[10] Indeed, the court reiterated its prior statement: "...the Change of Operations Committee has broad authority... *the decision arrived at was a permissible one.* (Pet. App. A22 (emphasis supplied)).

Nevertheless, the district court determined that certain activities, taken pursuant to normal and customary change of operations determinations, justified a finding of breach of the duty of fair representation and the large damage award which the Eighth Circuit vacated.

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[9] Note that the parties stipulated that the NMFA is lawful: "there is no issue here as to the validity of these agreements, and the parties agree that these agreements were legally negotiated". Stipulation; Pre-Trial Order, p. 11, § 3(c)(iii).

[10] Accordingly, the court stated, "...it will not be necessary for you to introduce any proof as to...whether or not this was a desirable move on the part of the company". (Trial Transcript, p. 1180).

B. The ABF Change Of Operations

In May of 1975, ABF, "faced with mounting problems brought about by change in the flow of freight resulting from purchase of additional operating authority, adding new market areas, and stronger competition",[11] decided to "put [its] road operations at the headhaul which requires that the workload at various domiciles be changed".[12] Accordingly, ABF proposed to move drivers from South to North[13] — i.e., where the freight originated — at the "headhaul". Upon union objections at the hearing, the original proposal was withdrawn;[14] as was an amended proposal presented in July.[15] A further amendment resulting in a third proposal was later presented and approved after a hearing held in Chicago in September, 1975.[16] This change, which became effective in November, 1975, reduced employment by 50 in two Southern and two Central terminals, and increased the driving staff by 50 in the North.[17] The contractual seniority rights of all were protected — but movement South to North (while balancing fifty losses vs. fifty gains)[18] adversely affected the work schedules of plaintiffs, and resulted

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[11] Defendant's Exhibit 4, p. 217.

[12] *Ibid.*, at 218.

[13] The proposal (see Pet. App. A8) would have resulted in the elimination of seven jobs.

[14] The withdrawal was pursuant to the committee ruling to "refer it back to the parties". (D. Ex. 4, p. 354).

[15] Pet. App. A11.

[16] Pet. App. A11-12; D. Ex. 8 and 9; cf. TR 1639 ff.

[17] The specific gains and losses are set forth at Pet. App. A12.

[18] The original ABF proposal eliminated 68 jobs while adding only 61. See Pet. App. A8.

in redomicile of many of them.[19] As we have already pointed out, the district court held that this decision "was a permissible one", and within the "broad authority" of the change of operations committee. Pet. App. A22.

As stated in the NMFA, the committee has no power to tamper with "the employer's right to designate home domiciles and the operational requirements of the business".[20] ABF had the right to change its operations.[21] The committee's only power is "to determine the seniority of the employees affected".[22]

The district court granted damages not because the activity which it considered procedurally irregular had caused damage, but because, in the view of the district court, otherwise "employees would have no way of requiring their union to represent them fairly or of requiring change of operations committees to follow agreed-upon procedures". (Pet. App. A24).

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[19] Generally, the movement was: 14 Fort Smith drivers were given the option to exercise modified system seniority (Pet. App. A7) and move elsewhere in the South in the ABF system.

The diminished work load in Little Rock meant that lesser seniority drivers there had the options to bid into a "Master Active Pool" from which the gaining terminals were to be staffed, to move elsewhere in the ABF system in the South in accordance with their modified seniority, or to be laid off pending recall in Little Rock when business there warranted.

[20] NMFA, Art. 8, § 6, Pet. App. A5.

[21] The Eighth Circuit recognized that right: "It is clear from the record that ABF had a right to change its operations by the shift of operational emphasis". Pet. App. A51.

[22] NMFA, Art. 8, § 6, Pet. App. A4.

REASONS FOR DENYING THE WRIT

I. Neither The Decision Nor The Record Below Raises The Questions Presented In The Petition.

Petitioners' statement of the questions is designed to erect and demolish strawmen. Actually, petitioners' failure to obtain damages was not a result of failure to ascertain the amount of damages with certainty; nor is the failure a result of a misplaced burden of proof. Rather, as the court of appeals explicitly held: "There is no evidence that the affected drivers were damaged any more by the action of the Committee that in fact approved the...proposal than they would have been damaged had the...proposal been given fair consideration by a properly constituted committee." (Pet. App. A52).

We have seen in the factual statement above that neither "uncertainty as to the amount of damages",[23] nor "shift[ing] of the burden of pro[of],[24] nor decisions as to the propriety of "affirmative defenses"[25] have anything to do with the court of appeals' vacating the damage award. Rather, the court found that the alleged irregularities in the proceedings of the arbitral body did not cause any damage. Accordingly, petitioners' statement of the questions — indeed, petitioners' entire exposition of reasons for granting the writ — addresses matters not decided by or presented to the court of appeals.

The simple holding is that procedural irregularities by an arbitral committee established by a collective bargaining agreement do not justify a damage award where the substantive decision is consistent with and warranted by the agreement, and provides the only seniority protection specified in the contract.

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[23] Pet., Questions Presented, No. 1.

[24] *Id.*, No. 4.

[25] *Id.*

II. The Court Of Appeals Correctly Applied The Law To The Undisputed Facts.

The committee's award protected both the contractual seniority rights of petitioners and the contractual rights of the employer to change employees' domicile. Accordingly, the court of appeals was clearly correct when it held, Pet. App. A51-52:

> "...the defendants are correct in their contention that the plaintiffs failed to prove damages caused by the errors in connection with the proceedings before the change of operations committee which the district court found to have been in violation of the NMFA and the respective Conference agreements.
>
> * * *
>
> The trial judge conceded that the change of operations in question would have been permissible had it been properly considered and approved. He assumed, however, that a properly organized and functioning committee could have come up with a different change of operations plan and one that, presumably, would or might have been more advantageous to the drivers.
>
> There is no substantial evidence that would support the assumption of the district court, and we agree with the defendants that when the trial court indulged that assumption and acted in reliance on it, it engaged in improper speculation and fell into clear error".

There is no claim that the committee's decision deprived any person affected by ABF's move to the North of seniority selection rights; further, the drivers who redomiciled as a result of the change of operations received all contractual benefits, including moving and lodging expenses, to which they were entitled.[26] Thus, the court of appeals rejected the district court's

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[26] See Pet. App. A6 for a listing of those benefits.

conclusion that awarding damages herein was necessary in order to have a deterrent effect upon union misconduct and found that the damages awarded were not tied to any of respondents' activities.

The court's vacation of the damages below was consonant with sound principles established by this Court. In *Electrical Workers* v. *Foust,* 442 U.S. 42, 60 L. Ed. 2d 698 (1979), this Court rejected an award of punitive damages in a suit for breach of the duty of fair representation. The Court categorically rejected plaintiff's arguments that a deterrence rationale supported the awarding of punitive damages without regard to the actual damages suffered primarily because "[t]he fundamental purpose of fair representation suits is to compensate for injuries caused by violations of employees' rights". 442 U.S. at 48-49. Thus, because the Court sought "to avoid burdening unions beyond the extent necessary to compensate employees for their injuries", 442 U.S. at 50, it held as follows:

> "Because general labor policy disfavors punishment, and the adverse consequences of punitive damage awards could be substantial, we hold that such damages may not be assessed against a union that breaches its duty of fair representation by failing properly to pursue a grievance. Accordingly, we reverse the judgment below insofar as it upheld the award of punitive damages". 442 U.S. at 52.

Thus, in *Foust,* in Judge Blackmun's opinion,

> "the Court adopt[ed] a per se rule that a union's breach of its duty of fair representation can never render it liable for punitive damages, no matter how egregious its breach may be". 442 U.S. at 52-53 (Blackmun, J., concurring).

Applying the rationale of *Foust* to the case at bar, respondents submit that the district court erred as a matter of law by awarding non-compensatory damages against them and

that the Eighth Circuit corrected that error by vacating the awards. The district court did not award damages to petitioners to compensate them for breach of the NMFA; rather, the court acknowledged that the committee's decision was a permissible one. Thus, although all of the drivers were treated fairly and in accordance with their seniority, although the change of operations was a "permissible" change within the terms of the agreement, and although the redomicile of the employees was properly administered in accordance with seniority, the district court awarded damages in order to deter future misconduct, not to compensate employees for harm caused by any violation of their contractual rights. That award constituted reversible error. See *Cronin* v. *Sears, Roebuck & Co.,* 588 F. 2d 616 (8th Cir. 1978); *Butler* v. *Teamsters Local 823,* 514 F. 2d 442, 447 (8th Cir.), *cert. denied* 423 U.S. 924 (1975); *St. Clair* v. *Teamsters Local 515,* 422 F. 2d 128, 132 (6th Cir. 1969).

Further, the cases cited by petitioners lend no comfort to their position since petitioners have simply failed to establish the essential fact of damage as a result of procedures used by the committee as opposed to the extend of the damage. See *Story Parchment Co.* v. *Patterson Parchment Paper Co.,* 282 U.S. 555, 562 (1931); *Bangor & A. R. Co.* v. *Brotherhood of Loc. Fire & Eng.,* 442 F. 2d 812, 820-823 (D.C. Cir. 1971).

In summary, respondents respectfully submit that the Eighth Circuit was correct as a matter of law in refusing to award any damages to the petitioners. Since the result reached by the change of operations committee was permissible and correct under the contract, petitoners have suffered no damages for which they must be compensated. They have received every contractual benefit to which they were entitled based upon a reasoned and contractually correct committee decision.

CONCLUSION

The petition presents an atypical case of no great significance. The true issue in this case is one tied to the particular facts of this litigation — whether any causal connection between "wrongful" activity and damage exists.

Petitioners suffered no damage caused by any breach of the contract or any procedures employed by the change of operations committee. The district court's plain error in awarding damages of a punitive nature has been corrected by the Eighth Circuit. Therefore, the petition should be denied.

Respectfully submitted,

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